

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN CINDY YOUNKIN**, on March 23, 2001 at 3:00 A.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Rep. Cindy Younkin, Chairman (R)
Rep. Rick Dale, Vice Chairman (R)
Rep. Gail Gutsche, Vice Chairman (D)
Rep. Keith Bales (R)
Rep. Dee Brown (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Larry Cyr (D)
Rep. Ron Erickson (D)
Rep. Linda Holden (R)
Rep. Rick Laible (R)
Rep. Jeff Laszloffy (R)
Rep. Douglas Mood (R)
Rep. Bob Story (R)
Rep. Brett Tramelli (D)

Members Excused: Rep. Rod Bitney (R)
Rep. Bill Eggers (D)
Rep. Christopher Harris (D)
Rep. Joan Hurdle (D)
Rep. David Wanzonried (D)

Members Absent: None.

Staff Present: Holly Jordan, Committee Secretary
Larry Mitchell, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 375, 3/16/2001; SB 378,
3/16/2001; SB 379, 3/16/2001
Executive Action: SB 375; SB 376; SB 378; SB
379; SB 167

HEARING ON SB 375

Sponsor: SEN. DUANE GRIMES, SD 20, Clancy

Proponents: M. S. Kakuk, MCA
Steve Welch, DEQ
Tom Ebzery, MCA

Opponents: Patrick Judge, MEIC

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 0.2}

SEN. DUANE GRIMES, SD 20, Clancy, stated this is a fairly simple bill. It just clarifies DEQ's authority to amend open cut plans. Montana mines over 14 million tons of sand and gravel and it's crucial to the use in many of the infrastructure projects. Right now the open cut law is working quite well because of the excellent working relationship between the department and the contractors. There wasn't any opposition in the Senate. He asked for a do concur.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 2.7}

M. S. Kakuk, MCA, stated that this bill gives DEQ the clear authority to amend permits. It also provides some clear guidance to the agency to modify the plan of operations and it provides some due process protections to the operator. It also tightens up the application process providing a time line for the agency and the applicants. Finally, it provides minor modifications to the enforcement provision. This bill is important and provides some good amendments to the open cut act.

Steve Welch, DEQ, stated SB 375 is logical, reasonable and necessary. The language requires specific documentation of need and a process for the operator to file if there is a disagreement. He asked for a do concur.

Opponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 7.4}

Patrick Judge, MEIC, stated that he missed this bill in the Senate. He doesn't see it as a major threat to Montana's natural environment but does see it as a potential threat to the human environment. It doesn't allow for the conditioning of permits

for gravel and sand pit mines for those impacts that may not have a substantive law. He stated page 6, line 15, violates a substantive numerical or narrative state standard. This isn't broad enough to capture the spectrum of potential impacts that are a very real concern for people living near these mines. These impacts are very common and are often the subject of complaints from neighboring residences. What we are talking about is just trying to be good neighbors. The existing system allows for assistance to come forward and to have a condition placed on a permit. If that is removed we may be inviting a more litigious environment. On another subject, he submitted an article titled "UM students earn degrees" showing he and **SEN. GRIMES** both earned masters degrees from the University of Montana **EXHIBIT (nah66a01)**.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 9.4}

REP. ERICKSON asked **Mr. Kakuk**, regarding page 7, line 14, why are the prior violations limited to within the last three years? **Mr. Kakuk** stated DEQ can't go back any further than three years.

REP. ERICKSON asked, is that policy in a federal rule? **Mr. Kakuk** stated no it is not codified in rules but it is a written policy.

REP. ERICKSON asked, regarding page 6, line 17, is that section less friendly in terms of working out social problems? **Mr. Kakuk** stated that you have to read the line in it's entirety. It says, "or regulation, or otherwise violate a purpose of this part." If you go to page 1, line 13, it states, "therefore it is the purpose of this part..." and it goes on listing 1 - 6. It makes it clear that if the agency finds any problem with an application they can go ahead and amend the permit to take care of it.

REP. LAIBLE asked **Mr. Kakuk**, with this bill can DEQ amend the permit to make it more stringent? **Mr. Kakuk** stated the working relationship between DEQ and the contractors is remarkable. It is effective, efficient and fair. DEQ does not currently have the clear authority to amend the plan of operations. The DEQ has to have that authority. The bill does allow DEQ to make a plan more stringent.

Closing by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 14.4}

SEN. GRIMES stated this is a result of what happens when you have a very capable staff that can communicate. He urged a do concur.

EXECUTIVE ACTION ON SB 375

{Tape : 1; Side : A; Approx. Time Counter : 15.4}

Motion/Vote: REP. ERICKSON moved that SB 375 BE CONCURRED IN.
Motion carried unanimously.

EXECUTIVE ACTION ON SB 376

{Tape : 1; Side : A; Approx. Time Counter : 16.1}

Motion: REP. BROWN moved that SB 376 BE CONCURRED IN.

Discussion:

REP. BROWN stated this bill has to do with School Trust Lands north of Kalispell that the DNRC wants to develop.

Motion: REP. GUTSCHE moved that AMENDMENT SB037603.amv BE ADOPTED.

Discussion:

REP. GUTSCHE passed out the amendment EXHIBIT (nah66a02) and explained it.

REP. CLANCY asked, was that original language struck in the Senate? Mr. Mitchell stated, the bill was drafted to take that language out.

REP. BROWN stated, the whole thing about this is not that the DNRC doesn't have to go through MEPA review and do an EIS but it should be done after something is formalized.

REP. DALE stated his understanding it is totally a matter of the timing of the MEPA review rather than if it would be done. The fact is that it will still be done.

REP. BROWN stated that she would concur with that.

REP. YOUNKIN asked REP. GUTSCHE, the words "or other authorization for use of state lands" what other possible use could you have besides sale, exchange, right-of-way, easement, placement of improvement, lease, license or permit? Those are fairly inclusive. REP. GUTSCHE stated she is trying to remember.

REP. ERICKSON asked REP. GUTSCHE to read from the testimony to respond to REP. YOUNKIN's question. REP. GUTSCHE stated the

argument made about deleting the language is that if we delete that language it allows DNRC to be exempt from local planning and zoning laws and MEPA.

REP. STORY stated there was a court decision holding that the neighborhood plan and the MOU represent an action which clearly falls within the other authorized uses of the state land.

REP. CURTISS stated there was a variety of proponents of the bill and none of them stated that this amendment was needed. This just triggers when MEPA is supposed to go into effect.

Vote: Motion that **AMENDMENT BE ADOPTED failed 8-12 with Cyr, Eggers, Erickson, Gutsche, Harris, Hurdle, Tramelli, and Wanzenried voting aye.**

REP. HOLDEN stated the mayor of Kalispell submitted a letter which states that he believes the bill reaches an excellent compromise between the current provision of state law and the goals, needs and public involvement associated with the current local planning and zoning.

Vote: Motion that **SB 376 BE CONCURRED IN carried 12-8 with Cyr, Eggers, Erickson, Gutsche, Harris, Hurdle, Tramelli, and Wanzenried voting no.**

HEARING ON SB 378

Sponsor: SEN. BILL TASH, SD 17, Dillon

Proponents: Sandra Olsen, DEQ
M. S. Kakuk, MCA

Opponents: None.

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 29.1}

SEN. BILL TASH, SD 17, Dillon, stated, the purpose of this bill is to collect and at least put some interest on these past due accounts. He passed out some amendments **EXHIBIT (nah66a03)**.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 30.9}

Sandra Olsen, DEQ, submitted written testimony **EXHIBIT (nah66a04)**.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 34.5}

REP. BALES asked **Ms. Olsen** asked, what is the status of the people who are unpaid back to 1992? **Ms. Olsen** stated they simply are not paying the bills at this time. There is no incentive to pay as they are not losing money. There are two options for pursuing costs. One is to bill quarterly and litigate at the end and the other is to take an enforcement action on that litigation. Many aren't paying until the enforcement action is done. **REP. BALES** asked are these real small amounts and what is the policy of trying to recover these amounts in a timely fashion? **Ms. Olsen** stated up front orders are issued for cleanup of the site which takes many years. Following the implementation of those then we go into the cost recovery phase and the litigation.

REP. STORY asked **Ms. Olsen** are your collection methods just to keep sending bills? **Ms. Olsen** stated yes, until the litigation step is taken. **REP. STORY** asked, has the department ever looked into the option of using the collection services at the Department of Revenue? **Ms. Olsen** stated she does not believe so. **REP. STORY** stated it is his understanding that the Department of Revenue does have a service they provide the state agencies that collects bad debts. **Ms. Olsen** stated that DEQ would certainly look into that.

REP. CLANCY asked **Ms. Olsen** what type of business are these? **Ms. Olsen** stated there are a number of different types of businesses varying from dry cleaning businesses to mining related entities. **REP. CLANCY** asked, are these small or large accounts? **Ms. Olsen** stated, cumulatively they are large. If the department had been assessing an interest charge all along there would be approximately \$80,000 in overdue interest assessments. That leaves an underlying base of \$800,000 in unpaid costs.

REP. LAIBLE asked **Ms. Olsen**, what do you foresee is going to trigger actually going after these people? His concern is that if the department just continues to charge them interest and they don't pay until they finally go out of business this doesn't do any good. **Ms. Olsen** stated there is a trigger and she deferred the question to **Bill Kirley, DEQ**. He stated that the issue for the department in filing suit to collect these past due amounts is also related to the cleanup requirements those same parties have. What drives the department's priorities is the threat to

health or the environment that results from the contamination. He gave an example. **REP. LAIBLE** asked, so what happens is the department is devoting it's energies to the people that are currently polluting? **Mr. Kirley** stated, this program deals primarily with the past pollution. Current operations are really regulated.

Closing by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 43.9}

SEN. TASH stated this bill was a result of the Environmental Quality Council and issues that were reviewed during the last interim dealing with particularly the Lockwood solvent superfund site. The money collected goes into the environmental quality protection fund. He explained the amendments and asked that they be adopted. He asked for a do concur.

HEARING ON SB 379

Sponsor: **SEN. BILL TASH, SD 17, Dillon**

Proponents: **M. S. Kakuk, MCA**
Jan Sensibaugh, DEQ
Tom Ebzery, MCA
Angela Janacaro, MMA

Opponents: **Jeff Barber, Montana Chapter of the American Fisheries Society**

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 46.9}

SEN. BILL TASH, SD 17, Dillon, stated this bill allows, under a general permit, for storm water discharge. This is in association with construction activities. It came up during the interim when some questions were raised whether a general permit was adequate to deal with storm water discharge. The bill makes state law better consistent with federal law.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 49.5}

M. S. Kakuk, MCA, stated this is a very important bill. Currently DEQ has a general permit for storm water discharges in association with construction activities. He went over the

process for getting that permit. This bill will allow the contractor to submit a notice of intent to be covered along with a pollution prevention control plan outlining how they are going to comply with the general provisions of the permit. When the DEQ receives those documents the contractor is authorized to begin construction. It will simplify and streamline the authorization process to be covered under the general permit. The benefits are going to accrue to more than just the contractors. DEQ right now is spending a lot of person hours of reviewing these plans and they have very little time to inspect. The contractors are hoping this will lead to more time for the DEQ to get out and inspect the plans and hopefully prevent pollution.

Jan Sensibaugh, DEQ, submitted written testimony
EXHIBIT(nah66a05).

Opponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 54}

Jeff Barber, Montana Chapter of the American Fisheries Society, stated that he does not have any technical objections to the bill. His problem is a broader objection to the pre-approval of a permit as this bill eliminates the 30 day review. What is likely to happen if this bill happens is the contractor will submit a plan to the department, no one will look at, some pollution event will happen and at that point the department will step in.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 55.7}

REP. ERICKSON asked **Ms. Sensibaugh,** is there still going to be the 20 page permit application? **Ms. Sensibaugh** stated, they will have to submit their plan in compliance with the general permit.

REP. ERICKSON asked is that a long planning document? **Ms.**

Sensibaugh stated the general permit is 20 pages which they have to comply with. The plan that is submitted is the description of how the company is going to comply with the general permit conditions at the site they are at. **REP. ERICKSON** asked, so they are going to submit the plan and the permit and plan go onto a shelf and don't get looked at until something goes wrong? **Ms.**

Sensibaugh stated no. More people will be able to go out and look at the site to ensure that they are using the best management practices and that everything onsite is in accordance with the general permit. **REP. ERICKSON** asked, then they will carry the permit and the plan with them to the inspection? **Ms.**

Sensibaugh stated, they know the permit really well so they will just carry the plan. The general permit does not change. **REP.**

ERICKSON asked why do they do this 20 page permit? **Ms.**

Sensibaugh stated, the 20 pages of the general permit is the permit that they have to comply with. It is the document that sets out the standards for these construction projects that have to be met in order for the projects to go forward. Since these projects are all similar and the water discharge is similar there is only one permit that describes the requirements for all of those projects.

REP. GUTSCHE asked **Ms. Sensibaugh** what will the pollution prevention plan will contain? **Ms. Sensibaugh** stated the pollution prevention plan requirements will be part of the 20 page general permit. It will be the pollution prevention plan for the activities onsite. **REP. GUTSCHE** asked, so the pollution prevention plan is not a separate document from the general application? **Ms. Sensibaugh** stated yes it is. The pollution prevention plan is the specific plan submitted by the contractor for their site. It would be specific to their site and their equipment.

REP. YOUNKIN asked **Ms. Sensibaugh** are both the pollution prevention plan and the general permit reviewed by the department? **Ms. Sensibaugh** stated, the permit is adopted through rule making at the department. The plan would not be necessarily reviewed when it is submitted to the department. It will be reviewed during the site inspection. The plan is not reviewed prior to approving the project. **REP. YOUNKIN** asked, are the criteria in the general plan and the pollution prevention plan set within department rules? **Ms. Sensibaugh** stated that is correct.

REP. STORY asked **Ms. Sensibaugh** does this have a different effect when you are in an impaired segment of a stream? **Ms. Sensibaugh** stated no.

Closing by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 62.6}

SEN. TASH gave an example of why this bill is needed. **{Tape : 1; Side : B; Approx. Time Counter : 0.1}** The construction season in Montana is limited and these permits need to be granted right away. He asked for a do concur.

EXECUTIVE ACTION ON SB 378

{Tape : 1; Side : B; Approx. Time Counter : 2.4}

Motion: REP. DALE moved that SB 378 BE CONCURRED IN.

Motion/Vote: REP. CURTISS moved that AMENDMENTS SB037801.alm BE ADOPTED. Motion carried unanimously.

Motion/Vote: REP. CYR moved that SB 378 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON SB 379

{Tape : 1; Side : B; Approx. Time Counter : 3.9}

Motion: REP. DALE moved that SB 379 BE CONCURRED IN.

Discussion:

REP. ERICKSON stated that he has some problems with the bill as it seems like more paperwork is being put on the shelves. This is going to allow any company to send in a permit and immediately be given the right to start their work. At some unknown stage the department will send someone out to see if the plan is working and at that time the plan will be read. This company may be a brand new company who does not have any history in the state.

REP. LAIBLE stated that this will allow the construction to get done. The policy we have now doesn't say that the people at the job site are abiding by their plan anyway. This bill requires onsite inspections.

REP. BALES stated the general permit mandates certain criteria. The plan is just the way that the particular contractor is going to address those on that particular job. You almost have to go onsite to see if the contractors are complying with what they have in their plan. To approve the plan without ever visiting the site isn't nearly as efficient as visiting the site with plan in hand.

REP. DALE stated the 20 page permit is the set of standard substantive rules in reclamation requirements and standards of performance. By signing that and sending it in the construction company is acknowledging that they understand those requirements and they are committing to abide by them. The plans specific to the site are probably part of the set up plans that the contractor had to submit a bid on.

REP. STORY stated that this is comparable to the forest practices. Those practices seem to be working fairly well.

REP. ERICKSON stated that he agrees 100% with **REP. BALES** in that the important thing is to get onsite and find out if the company is complying with their plan. What we are saying now is that it is impossible to imagine a situation in which the plan is flawed. Most of the time this will work but there are situations that may not work. The department refuses to look at the plan and then goes onsite and finds out it is a bad plan.

Vote: Motion that **SB 379 BE CONCURRED IN** carried 14-1 with **Erickson** voting no.

EXECUTIVE ACTION ON SB 167

{Tape : 1; Side : B; Approx. Time Counter : 15.2}

Motion: **REP. DALE** moved that **SB 167 BE CONCURRED IN**.

Motion: **REP. YOUNKIN** moved that an **AMENDMENT TO DELETE THE LANGUAGE "OR CERTIFICATE OF SURVEY" THROUGHOUT THE BILL, BE ADOPTED**.

Discussion:

REP. YOUNKIN explained the amendment.

Vote: Motion that **AMENDMENT BE ADOPTED** carried unanimously.

Motion: **REP. DALE** moved that **SB 167 BE CONCURRED IN AS AMENDED**.

Discussion:

REP. ERICKSON asked **Ms. Sensibaugh** for her response to the amendment on what it does to the bill. **Ms. Sensibaugh** stated that the amendment does nothing to the bill. Deleting the language makes the bill clearer.

REP. STORY asked **Ms. Sensibaugh**, regarding the definitions on page 4, why is 20 acres used? **Ms. Sensibaugh** stated that was chosen because anything over 20 acres is safe to not go through sanitary review. **REP. YOUNKIN** stated that the requirement for subdivision review was passed in the 1993 legislature reducing it from 20 acres up to 160 acres. **Ms. Sensibaugh** stated 160 acres is within the Subdivision and Platting Act or the local government planning. It has been 20 acres in the Sanitation Subdivisions Act for a long time.

Vote: Motion that SB 167 BE CONCURRED IN AS AMENDED carried 14-6 with Curtiss, Holden, Laible, Laszloffy, Story, and Younkin voting no.

ADJOURNMENT

Adjournment: 4:40 P.M.

REP. CINDY YOUNKIN, Chairman

HOLLY JORDAN, Secretary

CY/HJ

EXHIBIT (nah66aad)